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The Fourth Amendment's Prohibition of Unreasonable Search and Seizure Does Not Prevent the Police from Implementing a Traffic Roadblock for the Purpose of Soliciting Information Related to a Specific Crime: *Illinois v. Lidster*

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The Fourth Amendment's Prohibition of Unreasonable Search and Seizure Does Not Prevent the Police from Implementing a Traffic Roadblock for the Purpose of Soliciting Information Related to a Specific Crime: *Illinois v. Lidster*

CONSTITUTIONAL LAW – FOURTH AMENDMENT – SEARCH AND SEIZURE – POLICE CHECKPOINTS – The United States Supreme Court held that traffic roadblocks are reasonable if they are set up by the police in order to obtain information from the drivers about a specific crime, and therefore they do not violate the Fourth Amendment's prohibition on unreasonable searches and seizures.

Illinois v. Lidster, 124 S. Ct. 885, 888 (2004).

In August of 1997, Robert Lidster was detained at a police roadblock, subjected to field sobriety tests, and then arrested for driving under the influence of alcohol.[1] The Lombard Police Department had set up the highway checkpoint in response to a fatal hit-and-run accident that occurred a week earlier in the same location, at approximately the same time of night.[2] The purpose of the checkpoint was to gather any available information about the accident from the drivers of the stopped vehicles.[3] At this roadblock, a police officer would detain each vehicle for approximately 10 to 15 seconds in order to hand a flyer to the driver and then ask the driver if they had seen anything happen on the night of the accident.[4] As Lidster was proceeding through the checkpoint, he almost hit one of the officers with his van.[5] That officer smelled alcohol on Lidster's breath, and therefore directed Lidster's vehicle over to a side street where another officer administered a sobriety

1. Illinois v. Lidster, 124 S. Ct. 885, 888 (2004).

2. *Lidster*, 124 S. Ct. at 888. A 70 year-old postal worker was killed as he was riding his bicycle home from work. *18 Month Sentence in Hit-Run Death*, CHICAGE TRIBUNE, Dec. 6, 1997, *available at* 1997 WL 3619283. A 23 year-old man was arrested and convicted of the crime several months later. *Id.*

3. *Lidster*, 124 S. Ct. at 888.

4. *Id*

5. *Id.* Lidster had already been questioned and was leaving the roadblock when he almost hit the officer. People v. Lidster, 747 N.E.2d 419, 421 (Ill. App. Ct. 2001).

test, which Lidster failed.[6] This resulted in his arrest, and ultimately, his conviction for driving under the influence of alcohol.[7]

Lidster disputed the validity of the arrest, arguing that the relevant evidence in the case against him was obtained pursuant to an unconstitutional stop.[8] Specifically, he argued that the highway checkpoint at which he was apprehended violated the Fourth Amendment.[9] The trial court disagreed with Lidster's argument, however, and denied Lidster's pretrial motion to quash his arrest, subjecting him to a jury trial that resulted in a guilty verdict.[10]

On appeal to the Appellate Court of Illinois, Second District, Lidster renewed his argument that the roadblock was unconstitutional, basing this on the theory that the checkpoint failed to meet a balancing test that was formulated by federal and state courts for determining whether a seizure is reasonable under the Fourth Amendment.[11] However, after the state and Lidster had already filed their appellate briefs, the United States Supreme Court decided the case of *City of Indianapolis v. Edmond*.[12] The *Edmond* decision seemed to overshadow the use of the balancing test in the Illinois courts' analysis of constitutionality under the Fourth Amendment.[13] In *Edmond*, the police set up a roadblock to look for evidence of drug crimes; they were attempting to stem the flow of illegal drugs without knowledge that any specific crime had occurred.[14] Because there was no individualized suspicion involved, the Supreme Court found that this roadblock was made for the

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6. *People v. Lidster*, 747 N.E.2d at 421. The officer did not know whether any laws had been violated, but decided to question Lidster based on a "feeling that something might be wrong." *Id.*

7. *Lidster*, 124 S. Ct. at 888.

8. *Id.*

9. *Id.* The Fourth Amendment states:

> [t]he right of the people to be secure in their persons, houses, papers, and effects, against unreasonable searches and seizures, shall not be violated, and no [w]arrants shall issue, but upon probable cause, supported by [o]ath or affirmation, and particularly describing the place to be searched, and the persons or things to be seized.

U.S. CONST. amend. IV.

10. *People v. Lidster*, 747 N.E.2d at 421. Lidster was sentenced to one year of court supervision, counseling, fourteen days in an alternative work program, and a $200 fine. People v. Lidster, 779 N.E.2d 855, 857 (Ill. 2002).

11. *People v. Lidster*, 747 N.E.2d at 421. The balancing test referred to is principally derived from the case of Brown v. Texas, 443 U.S. 47 (1979). *Lidster*, 124 S. Ct. at 891. This test weighs the public interest in conducting the roadblock against the intrusion on the rights of the motorists. *Lidster*, 747 N.E.2d at 421.

12. 531 U.S. 32 (2000).

13. *People v. Lidster*, 747 N.E.2d at 421-23.

14. *Lidster*, 124 S. Ct. at 888-89.

general purpose of controlling crime, and ruled that the Fourth Amendment forbade such seizures in the absence of special circumstances.[15] The Appellate Court of Illinois relied on *Edmond* to reverse Lidster's conviction.[16] Also relying on *Edmond*, and using the same reasoning as the appellate court, the Supreme Court of Illinois upheld the reversal of Lidster's conviction.[17]

The Supreme Court of Illinois began its analysis of the case by reviewing *Edmond*, and then disagreeing with the State about the relevance of *Edmond* to Lidster's case.[18] The State sought to distinguish *Edmond* from the roadblock at issue here, on the grounds that this roadblock was conducted to assist the police in solving a specific crime, and that the police were not attempting to gather information or evidence against the drivers themselves, as they were in *Edmond*.[19] Therefore, according to the State, the efforts of the Lombard Police Department were constitutional and did not amount to a highway checkpoint conducted for the purpose of general crime control.[20] But the Supreme Court of Illinois declared that the State's interpretation of *Edmond* was incorrect, and held that *Edmond* was determinative in Lidster's case.[21]

According to the Supreme Court of Illinois, the State's argument ignored the general rule given in *Edmond* -- that a seizure will ordinarily violate the Fourth Amendment if it is done without any "individualized suspicion of wrongdoing," and that a seizure conducted for the general purpose of crime control falls under this forbidden category.[22] The majority opinion continued by stating that there is no difference between seizures in which the police gather information leading to the arrest of one of the motorists, and where the police merely gather information from motorists that will lead to the arrest of someone else -- both types of police efforts are directed at general crime control and, therefore, both are unconstitutional.[23] After giving these rationales for applying *Edmond* to Lidster's case, the opinion goes on to give several statistics on the number of various felonies committed in the state of

15. *Id.* at 889.
16. *People v. Lidster*, 747 N.E.2d at 423.
17. People v. Lidster, 779 N.E.2d 885, 861 (Ill. 2002). Justice Freeman delivered the opinion of the court. *Id.* at 856.
18. *Id.* at 857-60.
19. *Id.*
20. *Id.*
21. *Id.*
22. *People v. Lidster (2002)*, 779 N.E.2d at 859.
23. *Id.* at 859-60.

Illinois.[24] This was done to illustrate that an excusal of the police conduct in this case would condone roadblocks in other felony cases, creating an unacceptable proliferation of these informational roadblocks.[25] Finally, the court's opinion addressed the contention that this type of situation would fall under a limited exception given in *Edmond*, allowing for emergency roadblocks conducted for such circumstances as catching a terrorist or a violent criminal who is likely to flee by a particular route.[26] But in the eyes of the Illinois Supreme Court, these scenarios were quite different from the roadblock in Lidster's case, as, in *Lidster*, there was no evidence that the criminal remained in the vicinity or that he posed any further threat to the community. Therefore the necessary exigent circumstances called for in *Edmond* did not exist in the *Lidster* case and the narrow exception did not apply.[27] Due to the State's failure to distinguish *Edmond*, the Supreme Court of Illinois upheld the reversal of Lidster's conviction, and concluded by stating that the goals of the police were laudable, but nevertheless amounted to an unreasonable seizure.[28]

On the other hand, the dissent argued that the majority was incorrectly interpreting *Edmond*.[29] The roadblock in *Edmond* was of an entirely different nature and the Supreme Court's ruling proscribing such roadblocks could not be read to categorically ban all informational roadblocks conducted for the purpose of solving a specific, known crime.[30] Because Lidster's seizure was conducted pursuant to an effort by police to gain information regarding a specific crime, it did not have the general crime control purpose that was proscribed in *Edmond*.[31] Additionally, a general crime control purpose did not apply here because the highway seizure had a connection with the goal of promoting highway safety.[32] In addition to these reasons, the dissent found support for their position from the Virginia Supreme Court in *Burns v. Commonwealth*,[33] the only other case decided since *Edmond* that involved

24. *Id.* at 860.
25. *Id.*
26. *Id.*
27. *People v. Lidster (2002)*, 779 N.E.2d at 860.
28. *Id.* at 861.
29. *Id.* at 862 (Thomas, J., dissenting).
30. *Id.* at 863 (Thomas, J., dissenting).
31. *Id.* (Thomas, J., dissenting).
32. *People v. Lidster (2002)*, 779 N.E.2d at 864. The dissent found support for this proposition in the rationale of Delaware v. Prouse, 440 U.S. 648 (1979). *Id.* (Thomas, J., dissenting).
33. 541 S.E.2d 872 (Va. 2001).

an informational stop.[34] Because the dissent did not believe that the *Edmond* decision was applicable to the present case, they thought that only the balancing test, which was originally advocated by Lidster, ought to be applied.[35] However, unlike Lidster, the dissent felt that the police were justified in using the roadblock under the balancing test, and would therefore reverse the lower appellate court's decision and uphold Lidster's conviction.[36] Finally, the dissenting opinion denounced the majority's suggestion that there would be a proliferation of roadblocks, stating that the statistics given by the majority were irrelevant to the present case, and that police resources would be too scarce for such a proliferation to happen.[37]

After the decision by the Supreme Court of Illinois, the Supreme Court of the United States granted Illinois' petition for a writ of certiorari[38] to determine whether the *Edmond* decision would act to prohibit police from conducting an interrogational roadblock for the sole purpose of gathering information related to a crime that had occurred a week earlier in the same location.[39] The United States Supreme Court, in a majority opinion written by Justice Breyer, began its analysis by immediately distinguishing the roadblock in *Edmond* from the roadblock at issue in Lidster's case.[40]

First of all, the checkpoint at issue in Lidster's case was significantly different in the Court's eyes from that of *Edmond*, because, in *Lidster*, the purpose of the stop was not to conduct general crime control, but rather to ask the public for help in solving a crime committed by someone other than the driver being stopped.[41] According to Justice Breyer, when *Edmond* was decided, the information-seeking roadblock issue was not before the Court, and the language of *Edmond*, which proscribes general

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34. *People v. Lidster (2002)*, 779 N.E.2d at 864-65. The Virginia Supreme Court upheld the arrest of a murderer after he was captured through an informational roadblock. *Id.*

35. *Id.*at 865 (Thomas, J., dissenting).

36. *Id.* at 865-67 (Thomas, J., dissenting).

37. *Id.* at 867 (Thomas, J., dissenting).

38. Illinois v. Lidster, 538 U.S. 1012 (2003) (granting certiorari). The Supreme Court decided to hear this case because of the conflicting decisions in Illinois and Virginia. *Lidster*, 124 S. Ct. at 888.

39. *See* Brief for the Petitioner, at i, (The state's and Lidster's separate formulations of the question presented).

40. *Lidster*, 124 S. Ct. at 888-89. Justice Breyer delivered the majority opinion, in which Chief Justice Rehnquist and Justices O'Connor, Scalia, Kennedy, and Thomas joined. *Id.* at 888.

41. *Id.*

crime control roadblocks, cannot be read to include such information--seeking stops.[42] After dispelling the notion that *Edmond* controlled the present case, Breyer went on to note that the Fourth Amendment itself does not outlaw all seizures that are conducted without individualized suspicion.[43] For example, sobriety checkpoints and Border Patrol checkpoints are consistent with the Fourth Amendment, although these types of roadblocks do not involve any individualized suspicion toward the detainees.[44] Furthermore, because Breyer stated that the concept of individualized suspicion is inapposite to the concept of seeking information from the public, the constitutionality of the Lidster roadblock could not depend on whether the police held any individualized suspicion toward the motorists.[45]

Justice Breyer continued the analysis, further separating the present case from *Edmond* by remarking that informational stops, such as the one in the *Lidster* case, are less likely to be intrusive or to provoke anxiety in the drivers because the public is often eager to help law enforcement officials in their crime--solving goals.[46] Moreover, the law allows such help from the public and allows police to solicit this help if needed.[47] Breyer conceded that there is a greater intrusion upon the motorist who is stopped when compared with the traditionally acceptable questioning of a pedestrian.[48] But the inconvenience caused by this intrusion is likely to be slight, and would probably be no greater than the usual traffic delays.[49] Furthermore, the Court reasoned that it would not be proper to allow the police to seek the voluntary help of pedestrians, but not the voluntary help of motorists.[50]

The majority opinion concluded its criticism of the Illinois Supreme Court's decision by dispelling the idea that allowing informational roadblocks would cause a proliferation of police checkpoints.[51] According to Justice Breyer, the fears of the Illinois appellate court are unfounded. Justice Breyer reasoned that, just as sobriety checkpoints, although legal, have not been widely used,

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42. *Id.* at 889.
43. *Id.*
44. *Id.*
45. *Lidster*, 124 S. Ct. at 889.
46. *Id.*
47. *Id.* at 889-90.
48. *Id.* at 890.
49. *Id.*
50. *Lidster*, 124 S. Ct. at 890.
51. *Id.*

also it is likely that informational roadblocks, if condoned by the Court, would not unreasonably increase in number due to community hostility and limited police resources.[52]

After Justice Breyer explained why the rule espoused in *Edmond* did not apply here, he further stated that information--seeking roadblocks are not automatically unconstitutional, as the Illinois Supreme Court held; rather, these roadblocks must, like every other seizure, pass the reasonableness test that was set forth in *Brown v. Texas*.[53] This test weighs "the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty."[54]

In applying the test, Justice Breyer first stated that the "public concern was grave" -- a known, specific crime had resulted in someone's death, and the killer was at--large.[55] Second, the roadblock effectively advanced this concern by tailoring the time and place of the roadblock to target the citizens who were most likely to be helpful.[56] Finally, the conduct of the police in asking their questions, handing out flyers, and stopping the cars for only a few seconds only minimally interfered with the drivers' Fourth Amendment liberty interests.[57] The checkpoint at issue in the *Lidster* case therefore passed the *Brown* reasonableness test and the Supreme Court of the United States accordingly reversed the judgment of the Illinois Supreme Court and upheld Lidster's conviction.[58]

The *Lidster* opinion, however, included a short additional opinion written by Justice Stevens, concurring in part and dissenting in part.[59] Justice Stevens agreed with the majority's distinction between roadblocks that seize citizens in order to determine whether they have committed a crime, and roadblocks such as the informational one in Lidster's case, where the police are only searching for information relating to a specific, earlier crime.[60] But, according to Justice Stevens, the facts on the record were

52. *Id.*
53. *Id.*
54. *Id.* at 890 (quoting Brown v. Texas, 443 U.S. 47, 51 (1979)).
55. *Lidster*, 124 S. Ct. at 891.
56. *Id.*
57. *Id.*
58. *Id.*
59. *Id.* at 891-92 (Stevens, J., concurring and dissenting). Justices Ginsburg and Souter joined in Justice Stevens' opinion. *Id.*
60. *Illinois*, 124 S. Ct. at 891-92 (Stevens, J., concurring and dissenting).

simply not developed enough to enable him to make any determination as to whether the roadblock was unconstitutionally intrusive, or whether this particular means of investigation was unconstitutionally ineffective in addressing the public concern.[61] Therefore, Justice Stevens agreed with the majority that the informational search during which Lidster was arrested was not unconstitutional on its face; however, Justice Stevens was in favor of remanding the case to the Illinois courts for a factual determination of whether the stop violated second or third prong of the *Brown* reasonableness test.[62] Despite Justice Stevens' dissention in part, all nine Justices agreed that an information-seeking police checkpoint is not automatically unconstitutional, and that such a roadblock must, like any other seizure, pass the reasonableness test that has been developed and refined through several decades of Supreme Court decisions.[63]

The Supreme Court of the United States first considered the constitutionality of police roadblocks/checkpoints in the mid-seventies in a series of cases involving the United States Border Patrol.[64] In the southwestern United States, police checkpoints and roving patrols were used by the Border Patrol inside the country to curb the flow of illegal immigrants from Mexico.[65] The constitutionality of these Border Patrol tactics were challenged for the first time in 1973 in the case of *Almeida-Sanchez v. United States*.[66]

In *Almeida-Sanchez*, the United States Supreme Court considered the constitutionality of roving patrols, during which Border Patrol officers would pull over vehicles near the Mexican border without probable cause and then search those vehicles for illegal aliens.[67] In the Court's opinion, these roving patrols were con-

61. *Id.* (Stevens, J., concurring and dissenting).
62. *Id.* (Stevens, J., concurring and dissenting).
63. *Id.* at 888.
64. *See* Almeida-Sanchez v. United States, 413 U.S. 266 (1973); United States v. Ortiz, 422 U.S. 891 (1976); United States v. Martinez-Fuerte, 428 U.S. 543 (1976).
65. *Almeida-Sanchez*, 413 U.S. at 268.
66. *Id.*
67. *Id.* at 268-75. This case involved a Mexican citizen, legally in the United States on a work permit, who was pulled over by a roving patrol and searched on a desolate road twenty-five miles north of the border. *Id.* at 267-68. The Border Patrol conceded that there was no probable cause for the actions of the roving patrol, which resulted in the man's arrest for marijuana possession. *Id.* It should be noted that the Court primarily focused on the constitutionality of the subsequent vehicle search, as opposed to whether the original seizure was lawful. *Id.*

ducted unconstitutionally.[68] According to the Court's majority opinion, written by Justice Stewart, probable cause must exist before a person's vehicle may be searched.[69] Justice Stewart did refer to Border Patrol checkpoints in the opinion, but the facts did not require him to directly address the constitutionality of the checkpoints at that time.[70] However, the protection from intrusion afforded by the court in *Almeida-Sanchez* was used by the Court several years later in the context of police roadblocks.[71]

In 1975, the Supreme Court took the opportunity to rule on the propriety of Border Patrol checkpoints in the case of *United States v. Ortiz*, which involved a checkpoint search that was conducted without probable cause.[72] In a lower ruling regarding the *Ortiz* matter, the Court of Appeals for the Ninth Circuit had extended the *Almeida-Sanchez* decision to also cover Border Patrol checkpoint searches, rendering them unconstitutional when conducted in the absence of probable cause.[73] On appeal to the United States Supreme Court, Justice Powell agreed with the Ninth Circuit and reiterated the application of the Fourth Amendment to vehicle searches as set forth in the *Almeida-Sanchez* case, stating that no vehicle may be searched absent either probable cause or the consent of the driver.[74] Thus, the Supreme Court affirmed the Ninth Circuit's decision, ruling the search unconstitutional and overturning the defendant's conviction.[75] However, Justice Powell declined to express an opinion on the bigger issue -- the constitutionality of the checkpoint itself.[76] He stated: "We also need not decide . . . whether Border Patrol officers may lawfully stop motorists for questioning at an established checkpoint without reason to believe that a particular vehicle is carrying aliens."[77] Thus, the

68. *Id.* at 273.
69. *Id.* at 268.
70. *Almeida-Sanchez*, 413 U.S. at 275-76 (Powell, J., concurring).
71. United States v. Ortiz, 422 U.S. 891 (1976).
72. *Ortiz*, 422 U.S. 891. Justice Powell delivered the opinion of the Court. *Id.* at 891. The record in *Ortiz* shows that at a checkpoint in San Clemente, CA, which was in operation about two-thirds of the time, the Border Patrol stopped and searched a car with no probable cause. *Id.* at 891-92. This search revealed three illegal Mexican immigrants, resulting in the conviction of the driver. *Id.*
73. *Id.* at 892. The Ninth Circuit's opinion was unreported. *Id.*
74. *Id.* at 896-97.
75. *Id.*
76. *Id.* at 897.
77. *Ortiz*, 422 U.S. at 897 n.3.

Court left the door open for a later ruling on the constitutionality of the initial seizure itself.[78]

Just over a year later, the Supreme Court finally decided whether the initial seizure at a Border Patrol checkpoint comports with the Fourth Amendment.[79] The case of *United States v. Martinez-Fuerte* involved the consolidated appeals of three California cases and one Texas case, all involving the transportation of illegal immigrants into the United States.[80] Unlike *Ortiz*, where it was assumed that the seizure was lawful and the constitutionality of the subsequent search alone was in question, the *Martinez-Fuerte* defendants challenged the constitutionality of the checkpoints themselves.[81] These defendants sought to have all such checkpoints deemed unconstitutional because, according to the *Martinez-Fuerte* defendants, the incriminating evidence was not gleaned from a search; rather, each driver incriminated himself in the midst of questioning from a Border Patrol officer once his car was stopped at the checkpoint.[82]

In deciding the constitutionality of the checkpoint seizures in *Martinez-Fuerte*, Justice Powell began by reviewing the positive aspects of these checkpoints.[83] First, he looked at the effectiveness of the checkpoints, and concluded, in agreement with the United States Border Patrol, that the Border Patrol checkpoints were an indispensable tool in the battle against illegal immigration.[84] He then observed that there was no way a checkpoint could be operated on a highway such that the only vehicles stopped would be the ones that arouse reasonable suspicion in the eyes of the Border Patrol agents.[85] Next, Justice Powell analyzed the way these checkpoints were conducted in comparison to other law enforcement methods, and determined that they were conducted in a reasonable manner and resulted in a relatively minimal intrusion into the liberties of the drivers, even in the case of drivers who were diverted off the road and into special stalls for more intense questioning.[86] Finally, Justice Powell stated that the Fourth

78. *See* United States v. Martinez-Fuerte, 428 U.S. 543, 555-56 (1976).
79. *Martinez-Fuerte*, 428 U.S. at 551-64.
80. *Id.* at 545-50. Justice Powell delivered the opinion of the Court. *Id.* at 545.
81. *Id.*
82. *Id.* at 545-50.
83. *Id.* at 551-53.
84. *Id.*
85. *Martinez-Fuerte*, 428 U.S. at 556-57.
86. *Id.* at 557-60. The opinion briefly acknowledged that these checkpoints often result in the diversion of drivers to secondary inspection areas largely on the basis of their appar-

Amendment affords less protection to people in automobiles than to people in the sanctity of their private dwellings.[87]

Justice Powell weighed all of these considerations favoring the Border Patrol's interests and against the liberty interests of the drivers being stopped and found that the government's interests sufficiently outweighed those of the drivers.[88] Therefore, the Court ruled that, consistent with the Fourth Amendment, the Border Patrol may stop drivers at these checkpoints and question them without any reasonable suspicion.[89] Furthermore, following the same reasoning, no warrant would be necessary for the operation of these checkpoints.[90]

Justice Brennan, joined by Justice Marshall, strongly dissented from the opinion of the majority.[91] These dissenters protested what they perceived to be the latest in a line of cases decided in that term which eviscerated the rights granted by the Fourth Amendment.[92] Justice Brennan stated that the majority's decision in *Martinez-Fuerte* could not be reconciled with the recent decisions in *Ortiz* and *Almeida-Sanchez*.[93] He dispelled the majority's balancing process of weighing governmental interests against individual liberties, alleging that it was a pretense for justifying arbitrary government action.[94] Justice Brennan, who viewed the checkpoints as unreasonable searches and seizures, lamented the discrimination that the majority's ruling allowed toward those of Mexican descent as they passed through these checkpoints.[95]

After its ruling in *Martinez-Fuerte* that police checkpoints can be constitutional, the United States Supreme Court did not consider the constitutionality of any other specific police roadblock until 1990, in the DUI checkpoint case of *Michigan Department of State Police v. Sitz*.[96] However, there were two other cases decided in 1979 that, while not deciding the constitutionality of a specific

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ent Mexican ancestry; however, in addressing this, the Court stated "we perceive no constitutional violation." *Id.* at 563.

87. *Id.* at 561-62.
88. *Id.*
89. *Id.* at 562-64.
90. *Martinez-Fuerte*, 428 U.S. at 564-67.
91. *Id.* at 567-77 (Brennan, J., dissenting).
92. *Id.* at 567 (Brennan, J., dissenting).
93. *Id.* at 568-69 (Brennan, J., dissenting).
94. *Id.* at 569-70 (Brennan, J., dissenting).
95. *Martinez-Fuerte*, 428 U.S. at 571-72.
96. 496 U.S. 444 (1990).

roadblock, significantly contributed to the way that the Supreme Court would later view roadblocks.[97]

The first of these cases was that of *Delaware v. Prouse*, in which the issue of whether a police officer may randomly stop a driver for the purpose of checking his or her license and registration materials, even though the officer did not observe the driver commit any violations was considered.[98] The Supreme Court answered this question in the negative.[99] In the majority opinion, Justice White did recognize that there was a governmental interest in promting safety on the roadways, and that randomly spot checking drivers' licenses was related to that interest because such random checks can help police keep unsafe drivers off of the road. According to Justice White, however, this safety interest did not rise to the level of overcoming the driver's opposing interest in freedom from such police intrustions.[100] Justice White sought to make it clear that the ruling would not preclude license spot checks that were less intrusive and that did not allow unbridled discretion on the part of the officer in deciding whom to pull over.[101] Justice White suggested that the questioning of all traffic at a roadblock may be a less intrusive and arbitrary means for license checks; in suggesting this, he implicitly approved the use of checkpoints for traffic safety purposes.[102]

The second important case decided in 1979, *Brown v. Texas*, did not involve automobiles at all.[103] Rather, it involved a pedestrian stopped by the police without any articulable reason for suspicion on the part of the police, other than the fact that the defendant was observed walking in a high crime area.[104] In seeking to prevent the same type of arbitrary government action proscribed in *Prouse*, Chief Justice Burger announced a balancing test of three factors to consider in determining the reasonableness of a seizure: "Consideration of the constitutionality of such seizures involves a

97. *See* Delaware v. Prouse, 440 U.S. 648 (1979); Brown v. Texas, 443 U.S. 47 (1979).

98. *Prouse*, 440 U.S. at 650-51. *Prouse* involved a driver who was stopped because the officer was not doing anything else at the time and saw his car go by. *Id.* The driver was arrested because the officer saw marijuana in plain view after approaching the vehicle. *Id.*

99. *Id.* at 663. Justice White delivered the opinion of the Court. *Id.* at 650.

100. *Id.* at 659.

101. *Id.*

102. *Id.*

103. *Brown*, 443 U.S. 47. Chief Justice Burger delivered the opinion of the Court. *Id.* at 48.

104. *Id.* at 48-50. Zackary Brown was arrested for violating Texas Penal Code § 38.02(a), which made it a crime to refuse to give one's name to the police when asked. *Id.* at 49; TEX. PENAL CODE ANN. § 38.02(a)(1974).

weighing of the gravity of the public concerns served by the seizure, the degree to which the seizure advances the public interest, and the severity of the interference with individual liberty."[105] Although Chief Justice Burger set forth this test rather casually in the text of his opinion, it eventually became an essential tool for deciding later roadblock cases.[106]

This balancing test became the rationale for upholding the constitutionality of police DUI checkpoints in *Michigan Department of State Police v. Sitz*, despite a very emphatic dissent by Justices Brennan and Marshall.[107] In the *Sitz* case, the state of Michigan instituted a checkpoint system whereby all cars would be stopped on certain roadways and the drivers briefly examined for signs of intoxication.[108] In a Fourth and Fourteenth Amendment challenge to the constitutionality of these checkpoints, the Michigan courts weighed the three prongs of the *Brown* balancing test, finding that the state did have an important interest in limiting drunk driving, but that these DUI checkpoints were ineffective in promoting that interest and their intrusion on individual liberties was substantial; therefore, the Michigan courts struck down these checkpoints as unconstitutional seizures.[109]

In the government's appeal to the Supreme Court, the parties challenging the constitutionality of the checkpoints argued that the Michigan courts that had supported their claim used the wrong analysis; they argued that the balancing test should not have been used and that a proper analysis would entail determining whether probable cause or reasonable suspicion existed for the stops.[110] The Supreme Court's opinion differed, however; the Court believed that the *Brown* balancing test was the proper way to analyze the Fourth Amendment reasonableness of police roadblocks.[111]

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105. *Brown*, 443 U.S. at 50-51. The Supreme Court used this test to overturn the defendant's conviction. *Id.* at 52.

106. *See, e.g., Lidster*, 124 S. Ct. at 885; *Edmond*, 531 U.S. at 32; *Sitz*, 496 U.S. at 444.

107. *Sitz*, 496 U.S. at 456.

108. *Id.* at 447-48. This is not a case where the defendant was arrested by police at a checkpoint; rather, the defendants were the Michigan State Police and the persons bringing the action were licensed Michigan drivers seeking injunctive relief from impending checkpoints. *Id.* at 448.

109. *Id.* at 448-49.

110. *Id.* at 449-50. The citizens argued that the 1989 Supreme Court decision of Treasury Employees v. Von Raab, 489 U.S. 656 (1989), dictated that the balancing test only be used when there is a special governmental need, and here the state had exhibited no such need. *Sitz*, 496 U.S. at 459-60.

111. *Sitz*, 496 U.S. at 450.

Chief Justice Rehnquist then applied the balancing test to the specific facts of the Michigan DUI checkpoint program.[112]

First, Chief Justice Rehnquist stressed that the state had an indisputable interest in eliminating the problem of drunken driving.[113] He then compared this extremely important state interest against the intrusion upon the rights of motorists.[114] In Chief Justice Rehnquist's opinion, the Michigan courts had wrongly considered the subjective intrusion that would be felt by a drunk driver. Rather, according to Chief Justice Reinquist, the courts should have considered only the objectively intrusive factors of the stop itself, such as the amount of time the drivers were detained, combined with the subjective effect these factors would have on a law-abiding citizen.[115] Just as it did in the *Martinez-Fuerte* case, the United States Supreme Court found that the intrusion upon the drivers stopped at these checkpoints is relatively minimal when compared to the state interests in eradicating drunk driving.[116]

Next, the Court's opinion gave consideration to the overall effectiveness of DUI checkpoints in curbing drunken driving.[117] Chief Justice Rehnquist, although careful to note that the choice of law enforcement methods belongs to politically accountable officials, still looked at the factual record and determined that these checkpoints are effective in catching drunk drivers, just as the checkpoints in *Martinez-Fuerte* were effective in catching illegal immigrants.[118] Unlike the ineffective random stops at issue in *Prouse*, these checkpoints achieved the state interest without the same "kind of standardless and unconstrained discretion" that the Court had previously condemned in *Prouse*.[119] Chief Justice Rehnquist's opinion considered the important state interest, the minimal individual intrusion, and the effectiveness of the checkpoints, and determined that the Michigan DUI checkpoint program was consistent with the Fourth Amendment.[120]

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112. *Id.* at 451-52.
113. *Id.* at 451. The opinion states that "[d]runk drivers cause an annual death toll of over 25,000 and in the same time span cause nearly one million personal injuries and more than five billion dollars in property damage." *Id.*
114. *Id.* at 451-53.
115. *Id.* at 452.
116. *Sitz*, 496 U.S. at 453.
117. *Id.* at 453-55.
118. *Id.*
119. *Id.* at 454-55 (quoting *Prouse*, 440 U.S. at 661).
120. *Sitz*, 496 U.S. at 455.

Justice Blackmun would only go so far as to concur in the judgment alone, although he gave no alternative rationale for reaching this judgment.[121] His only comment was to commend the majority for finally stressing the tragic massacre of innocent lives on American roads by drunk drivers.[122]

Justice Brennan and Justice Marshall, however, dissented from the majority's decision and stressed that the Court should not automatically engage in a balancing test for each and every seizure that takes place on the roads.[123] Rather, according to the dissenting opinion, the balancing test should be used only for those seizures that are "minimally intrusive."[124] Therefore, the analysis as to the level of intrusiveness should be the first thing that the Court looked at, not the last, as was the case in *Sitz*.[125] Justice Brennan also felt that the same showing of need for seizures without reasonable suspicion that had been made in *Martinez-Fuerte* in the illegal alien context had not been made here.[126] Perhaps, he suggested, there were other ways of determining whether a driver was intoxicated, without pulling him over; whereas in the case of *Martinez-Fuerte* there was no possibility of detecting illegal immigrants without stopping each car.[127] He recognized that society was likely to receive the *Sitz* decision well, but that this did not justify abdicating the protections of the Fourth Amendment.[128]

Justice Stevens wrote a separate dissenting opinion, agreeing in part with the opinion written by Justice Brennan.[129] Justice Stevens' dissent was more forceful than the Brennan dissent, however, and critical of the majority opinion.[130] First of all, in Justice Stevens' opinion, the majority greatly underestimated the intrusion caused by an unannounced roadblock at night and the fear that such a roadblock could instill in even law-abiding citizens.[131] Furthermore, the arbitrariness that the Court had previously attacked in cases such as *Prouse* still existed here; an officer was still free to randomly subject any motorist to sobriety checks,

121. *Id.* at 455-56 (Blackmun, J., concurring).
122. *Id.* (Blackmun, J., concurring).
123. *Id.* at 456-60 (Brennan, J., dissenting).
124. *Id.* (Brennan, J., dissenting).
125. *Sitz*, 496 U.S. at 456-60 (Brennan, J., dissenting).
126. *Id.* (Brennan, J., dissenting).
127. *Id.* at 458-59 (Brennan, J., dissenting).
128. *Id.*at 459 (Brennan, J., dissenting).
129. *Id.* at 460 (Stevens, J., dissenting).
130. *Sitz*, 496 U.S. at 460-77 (Stevens, J., dissenting).
131. *Id.* at 463-66 (Stevens, J., dissenting).

which heightened intrusion into the liberties of law-abiding citizens.[132] In addition to this heightened intrusion, the effectiveness of sobriety checkpoints was, in Justice Stevens' opinion, highly speculative, if not altogether non-existent.[133] In fact, Justice Stevens claimed that any apparent effectiveness of these checkpoints is more likely caused by the intense publicity given to them by the media, and just because a certain practice sets a public example for others does not justify it; as Justice Scalia stated in *Treasury Employees v. Von Raab*, "the impairment of individual liberties cannot be the means of making a point. . . ."[134] Justice Stevens thought that the majority had weighed the various factors of the balancing test wrongly, underestimating the intrusiveness of the checkpoints and overestimating their effectiveness, and for these reasons, he vehemently disagreed with the majority and believed that the Michigan DUI checkpoints should have been considered unconstitutional.[135]

Ten years later, the Supreme Court agreed to hear another very controversial roadblock case, the interpretation of which would become an important part of the Supreme Court's decision in *Illinois v. Lidster*.[136] After deciding the constitutionality of border patrol and DUI checkpoints in *Martinez-Fuerte* and *Sitz*, the Supreme Court took the opportunity to consider a checkpoint whose primary purpose was to control the flow of illegal drugs in *City of Indianapolis v. Edmond*.[137] In the *Edmond* case, the police would stop groups of cars, and then would ask each driver for their license and registration materials and look for signs of intoxication.[138] In addition to these now-commonplace procedures, the police would look inside each car through the windows and run drug-sniffing dogs around the outside of the car.[139]

Justice O'Connor began the majority opinion for the *Edmond* case by noting the cases in which the Court has upheld suspi-

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132. *Id.* (Stevens, J., dissenting).

133. *Id.* at 460-62, 468-72 (Stevens, J., dissenting).

134. *Id.* at 475-77 (Stevens, J., dissenting) (quoting *Von Raab*, 489 U.S. at 686-67 (Scalia, J., dissenting)).

135. *Sitz*, 496 U.S. at 477 (Stevens, J., dissenting).

136. *See Edmond*, 531 U.S. at 34; *Lidster*, 124 S. Ct. 888-89.

137. *Edmond*, 531 U.S. at 34. Justice O'Connor wrote the opinion for the Court. *Id.*

138. *Id.* at 34-36. This action was started by two men seeking declaratory and injunctive relief after being stopped, but not arrested, at one of the checkpoints. *Id.*

139. *Id.* The fact that dogs walked around the car did not transform this seizure into a search, pursuant to the decision in *United States v. Place*; therefore, the presence of the dogs apparently played no role in Justice O'Connor's decision. *Id.* (citing United States v. Place, 462 U.S. 696 (1983)).

cionless seizures, and the reasons why they were allowed.[140] The reason for upholding the suspicionless seizures in *Martinez-Fuerte* was the exceptional needs of the government in policing the border.[141] In *Sitz*, on the other hand, the seizures were justified by the obviously close connection "between the imperative of highway safety and the law enforcement practice at issue."[142] Finally, Justice O'Connor discussed *Prouse* and commented that the Court had said that it would permit a hypothetical roadblock for the purpose of checking licenses because of a similar relationship to roadway safety, as in *Sitz*.[143] However, Justice O'Connor also recalled that in *Prouse*, the Court distinguished between allowing such license checks for the purpose of highway safety, and allowing them for the purpose of general interest in crime control.[144] The Court had prohibited this latter purpose.[145]

The majority of the court believed that the primary purpoe of the checkpoint at issue in *Edmond* was the detection of "ordinary criminal wrongdoing"-- a purpose that was never condoned by the Court in prior case law.[146] Hence, Justice O'Connor stated that the checkpoint program at issue violated the Fourth Amendment without even engaging in any sort of balancing test, such as that which had been applied in *Brown*.[147] Therefore, the Court refused to suspend the usual requirement of individualized suspicion before a seizure can occur for the purpose of "ordinary crime control."[148]

Justice O'Connor also dispelled the state's notions that the checkpoint at issue in the *Edmond* case could be likened to those in *Martinez-Fuerte* and *Sitz*.[149] First, according to Justice O'Connor, there was no similar highway safety concern like there was in *Sitz*, and, although there was a similar contraband nature to the crime as in *Martinez-Fuerte*, the border patrol context of that case was far different than the drug situation in Indiana.[150]

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140. *Edmond*, 531 U.S. at 37-40.
141. *Id.* at 37.
142. *Id.* at 39-40.
143. *Id.*
144. *Id.*
145. *Edmond*, 531 U.S. at 39-40.
146. *Id.* at 40-44.
147. *Id.*
148. *Id.* The Court's opinion did contemplate several circumstances where individualized suspicion could be suspended for "ordinary crime control" purposes, such as an impending terrorist attack or a fleeing, dangerous criminal. *Id.* at 44.
149. *Id.* at 40-44.
150. *Edmond*, 531 U.S. at 40-44.

Finally, Justice O'Connor dismissed the state's argument that it had valid secondary purposes for the checkpoint, such as checking licenses and controlling intoxicated drivers, and that the Court should not look further into the checkpoint to determine what the police department's primary purpose was for the roadblock.[151] Justice O'Connor first stated that prior Supreme Court decisions did not prevent the Court from making such an inquiry.[152] She then reasoned that without such an inquiry, one could imagine a veritable plethora of situations where unconstitutional seizures could be justified if they only include in their purposes a license or sobriety check.[153] Therefore, in the majority's opinion, no matter what secondary purposes the state had in mind, this search was unconstitutional because its primary purpose was an unconstitutional one -- "general interest in crime control."[154]

Chief Justice Rehnquist, however, felt that the legality of the checkpoint in *Edmond* followed naturally after the decisions in *Martinez-Fuerte* and *Sitz*.[155] As was the situation in these two prior cases, Chief Justice Rehnquist felt that the intrusions into the lives of the drivers were sufficiently minimal.[156] At the same time, several of the checkpoint's purposes, namely those of checking licenses and looking for signs of intoxication, had been condoned as vital state interests in *Prouse* and *Sitz*, such that the Court upheld the checkpoint seizures without the need for individualized suspicion in those cases.[157] Because of these valid reasons for enacting this minimally intrusive roadblock, Chief Justice Rehnquist stated that the drug interdiction purpose was irrelevant, and that there should not be any inquiry into the subjective purposes of the police department conducting the roadblock.[158]

Chief Justice Rehnquist continued in his dissent, pointing out that the majority was now utilizing a new test for determining the constitutionality of roadblocks, the "non-law-enforcement primary purpose test."[159] He noted that the Court had already rejected a

151. *Id.* at 45-46.
152. *Id.* at 45-47.
153. *Id.* at 46-47.
154. *Id.* 48.
155. *Edmond*, 531 U.S. at 50 (Rehnquist, C.J., dissenting). Justices Scalia and Thomas joined in this portion of the dissent. *Id.* at 48.
156. *Id.* at 52-53 (Rehnquist, C.J., dissenting).
157. *Id.* at 50-51(Rehnquist, C.J., dissenting).
158. *Id.* at 51-53 (Rehnquist, C.J., dissenting) (citing Whren v. United States, 517 U.S. 806 (1996)).
159. *Edmond*, 531 U.S. at 53 (Rehnquist, C.J., dissenting). Justice Scalia did not take part in this portion of the dissent. *Id.* at 48.

similar non-law-enforcement primary purpose test in *Michigan Department of State Police v. Sitz* in favor of the *Brown* balancing test.[160] In *Sitz*, the Court had dispelled the notion that there must be some special showing of governmental need, beyond the usual need for ordinary law enforcement, before a suspicionless seizure could be effectuated on the highways.[161] Chief Justice Rehnquist followed this reasoning by arguing that this "special needs" showing must only be made in circumstances involving suspicionless searches of a person's home or body -- in any other circumstance, such as a roadblock seizure, the balancing test is applicable.[162] So in *Edmond*, Chief Justice Rehnquist would have followed *Sitz* and applied the original *Brown* balancing test, not this new test in which the Court sought to determine whether the police had the unlawful primary purpose of general law enforcement.[163] This new test, in Rehnquist's opinion, was bound to inspire new litigation over the purpose of police roadblocks, and placed all police checkpoints into doubt because now they may be deemed unconstitutional if it can be shown that the police had an unlawful agenda hiding behind an otherwise legitimate roadblock.[164]

Although Justice Thomas joined in Chief Justice Rehnquist's dissent, he wrote separately to convey an additional viewpoint.[165] In this brief dissent, he stated that *Martinez-Fuerte* and *Sitz* compelled him to view the *Edmond* stop as a constitutional seizure.[166] However, he stated that he was not convinced that *Martinez-Fuerte* and *Sitz* were correctly decided, and that he doubted that the original Framers of the Fourth Amendment would have found these suspicionless stops to be reasonable.[167]

In these last few words of his *Edmond dissenting* opinion, Justice Thomas reflected doubt about the entire jurisprudential history that eventually led to the latest roadblock ruling in *Lidster v. Illinois*. The truth is that the wisdom behind the *Lidster* decision, or the lack thereof, cannot be fully grasped unless one looks at the foundation upon which it was based. This foundation has been

160. *Id.* at 54-55 (Rehnquist, C.J., dissenting).
161. *Id.* at 53-54 (Rehnquist, C.J., dissenting) (citing *Sitz*, 496 U.S. at 449-50).
162. *Edmond*, 531 U.S. at 54-56 (Rehnquist, C.J., dissenting).
163. *Id.* (Rehnquist, C.J., dissenting).
164. *Id.* at 55-56 (Rehnquist, C.J., dissenting).
165. *Id.* at 56 (Thomas, J., dissenting).
166. *Id.* at 56 (Thomas, J., dissenting).
167. *Edmond*, 531 U.S. at 56 (Thomas, J., dissenting). Justice Thomas declined to address this issue any further because the citizens originally seeking the injunction had not raised the issue themselves. *Id.*

highly controversial, and there exists no argument for, or against, suspicionless roadblock seizures that will please everyone. But all scholars of the law should agree that the preservation of the Constitution of the United States of America is paramount. It separates modern America from the fear and oppression that was so prevalent behind the Iron Curtain, while at the same time preserving order and safety in the land. This can be a delicate balancing act. The Fourth Amendment was crafted to perform this balancing act between the everyday lives of ordinary citizens and the duties of the police, who are the frontlines of government power.

Justice Burger did an excellent job of articulating the way a court should use the Fourth Amendment to balance these sometimes contrary interests in *Brown v. Texas*.[168] But, when using this test to weigh the competing interests in Fourth Amendment search and seizure issues, a court should keep in mind, first and foremost, the consequences of unchecked government power. As Justice Jackson said:

> [t]hese [Fourth Amendment rights], I protest, are not mere second-class rights but belong in the catalog of indispensable freedoms. Among deprivations of rights, none is so effective in cowing a population, crushing the spirit of the individual and putting terror in every heart. Uncontrolled search and seizure is one of the first and most effective weapons in the arsenal of every arbitrary government.[169]

Therefore, a court should very carefully weigh the future consequences when deciding that a governmental interest overrides an individual's liberty interests, thereby turning an otherwise unreasonable search into a reasonable one.

A wise person once said that the road to hell is paved with good intentions, and the rulings in *Martinez-Fuerte* and *Sitz* are two good examples of this old adage being played out in real life. The outward goals of the government in those cases were honorable; in these uncertain times after the horrors of September 11, 2001, no one can dispute our need to control the flow of people into the country. Likewise, one can scarcely turn on the television without hearing about a tragic accident caused by the foolishness of a drunk driver. These goals are honorable, and the government was

168. *See Brown*, 443 U.S. at 50-51.
169. Brinegar v. United States, 338 U.S. 160, 180 (1949) (Jackson, J., dissenting).

attempting to address them in the roadblocks that were upheld in *Martinez-Fuerte* and *Sitz*. In each of these cases, the Supreme Court used a balancing test to uphold the government's power to implement roadblocks.[170]

Even though a balancing test was the proper way to analyze *Martinez-Fuerte* and *Sitz*, the Supreme Court allowed the "good intentions" of the police to control, and improperly weighed the interests involved. In order to allow the government to carry out its goals, the majorities in these two cases underestimated the severity of the intrusions caused by the checkpoints. Furthermore, the government's effectiveness in achieving these goals through roadblocks was in doubt, especially in the case of the DUI checkpoints in *Sitz*.[171] They also failed to consider the probability that the Framers of the Constitution would have objected to these roadblocks, as pointed out by both Lidster's Supreme Court brief and Justice Thomas' dissent in *Edmond*.[172] But the *Lidster* Court nevertheless felt that the government's interests outweighed the individual's. As such, the Court allowed these two police checkpoints to stand, and also condoned the use of drivers' license checkpoints in *Prouse*. In making these decisions, the Court, in effect, set a virtual Pandora's Box in front of the government.

The government decided to open this Pandora's Box in *City of Indianapolis v. Edmond*, by attempting to further expand the powers that had already been given to it. To control the evils that had been unleashed by the prior interpretations of the balancing test in *Martinez-Fuerte* and *Sitz*, Justice O'Connor had to come up with a new test. She could not adhere to stare decisis and use the *Brown* balancing test because, as Justice Rehnquist communicated in his dissent, this would result in the Court's acceptance of the Indianapolis roadblock.[173] Therefore, she invented the "non-law-enforcement primary purpose test," as Justice Rehnquist called it. Rehnquist rightly stated in his dissenting analysis that the *Edmond* roadblock should have been upheld because it "naturally followed" the reasoning behind the prior decisions.[174] The drug checkpoint in *Edmond* was no more than a mere extrapolation of the powers that were extended to the government through

170. *See Martinez-Fuerte*, 428 U.S. at 556-62; *Sitz*, 496 U.S. 451-55.
171. *See Sitz*, 496 U.S. at 469-72 (Brennan, J., dissenting).
172. *See* Brief for Respondent at 9-13; *Edmond*, 531 U.S. at 56 (Thomas, J., dissenting).
173. *Edmond*, 531 U.S. at 53 (Rehnquist, J., dissenting).
174. *Id.* at 50 (Rehnquist, J., dissenting).

the balancing test in those prior cases; the only difference was that now there existed the additional purpose of drug control.

At first blush, the Border Patrol and DUI roadblocks sounded and continue to sound like a good idea to many Americans. However, the potential for governmental abuse was always obvious and should have been foreseen by the Court. This abuse materialized in the Indianapolis Police Department's drug control roadblock, which would have been constitutional had it not been for the introduction of Justice O'Connor's new test. Thus, the *Edmond* decision is a perfect example of why *Martinez-Fuerte* and *Sitz* should have been proactively decided in favor of the individual's liberty interest in being free from suspicionless roadblock seizures.

If one accepts the premise that the entire decision-making history that eventually culminated in *Lidster* was built on shaky ground, then obviously the *Lidster* decision itself was ill-advised, and no further analysis would be necessary. But this is a difficult issue, and many believe that the Court's decisions have been proper interpretations of the constitution that have been made in the best interest of the nation. Therefore, let us objectively analyze the *Lidster* decision against the jurisprudence of the *Martinez-Fuerte* and *Sitz* decisions, with the "non-law-enforcement primary purpose test" of *Edmond* denoting the outer perimeter of acceptable government conduct.

In *Lidster*, the Supreme Court did a fine job of differentiating the facts of the case from those of *Edmond*.[175] The police department's stated purpose for the informational roadblock in *Lidster* was not that of general crime control, as the Court found to be the purpose of the Indianapolis roadblock in *Edmond*; rather, the police were trying to solve a specific crime. Justice O'Connor's opinion in *Edmond* was not tailored toward the situation where the people are being asked to help the police in solving a specific crime, instead, it was intendded to prevent those roadblocks in which the police are trying to catch the vehicle's occupants in some sort of a crime, absent the three exceptions enumerated in *Martinez-Fuerte*, *Prouse*, and *Sitz*. It would take a very broad reading of *Edmond* to reach the conclusion that the Illinois Supreme Court had reached, namely that the *Edmond* decision compelled the outlawing of informational roadblocks. Therefore, Justice Breyer was correct in stating that the rule of unconstitutional-

175. *Lidster*, 124 S. Ct. at 888-91.

ity that was espoused in *Edmond* did not apply to the present case. But this was really just a threshold issue. The Court then returned the traditional *Brown* balancing test that they had neglected to use in the *Edmond* decision.

Regardless of what one might believe about the constitutionality of DUI checkpoints, United States Border Patrol checkpoints, or even drivers' license checkpoints, as far as the *Brown* test is concerned, the facts of the *Lidster* case fall far below the necessary degree of governmental interest set forth in the prior cases and the likelihood that this roadblock would advance that interest does not rise to the level adjudged necessary by the previous case law. At the same time, the severity of the intrusion caused by this roadblock in *Lidster* was really no less than in the situations at issue in the prior cases, even though the roadblock was conducted for more amiable reasons.

First of all, under the facts of Lidster, there was no real gravity of public concern as there was in the previous cases. It is true that a person was killed, and solving this crime relates to one of the most fundamental purposes of government, but it is not as if this same assailant was driving around at the time of the roadblock, threatening to kill more people, which is the situation with DUI checkpoints. The ominous threat of drunk drivers on the road is what compelled the Court to uphold DUI checkpoints in *Sitz*. Likewise, the threat of illegal aliens constantly and irreversibly streaming into the country amounted to the requisite grave public concern in *Martinez-Fuertes*. Both of these cases involved ongoing governmental concerns at the time of the particular roadblocks in question, but *Lidster* involved something that happened in the past. The gravity of this past crime simply does not have the same magnitude as the ongoing problems in the prior cases.

Furthermore, the likelihood that this informational checkpoint would achieve its stated objective by eliciting some helpful information seems very implausible. If anyone had seen anything the night that the crime took place and wanted to help police solve the crime, they probably would have reported this within the past week, assuming that the police had publicized the unfortunate event. One wonders if the police weren't simply inconveniencing everyone on the road that night in the hopes that the hit-and-run driver might possibly take the same road a second time; again, the chances of this happening were very slim indeed. Overall, the *Lidster* roadblock does not appear to advance the government's

interests to anywhere near the degree that the *Sitz* and *Martinez-Fuertes* checkpoints advanced the governmental interests identified in those cases. For this reason, and because the public concern was not as grave as in prior cases, this roadblock should have failed the *Brown* balancing test, and any evidence obtained pursuant to the roadblock should have been excluded from Robert Lidster's trial.

This approach to the *Lidster* decision may come across as "soft on crime." But no doubt, the Court's decision in *Lidster* will spawn new types of roadblocks and seizures. Maybe they will not become as commonplace as Justice Freeman of the Illinois Supreme Court suggested,[176] but the Supreme Court's decision definitely encourages police departments to conduct this type of activity, which will undoubtedly violate the *Brown* balancing test in most, if not all, cases. Even if the inconvenience caused by these informational roadblocks may seem trivial, these ostensibly minor infractions against the Fourth Amendment rights of United States citizens cannot be tolerated. In the end, taking a hard line behind the words of the Fourth Amendment in cases such as *Lidster* does not amount to being "soft on crime." To the contrary, it means having the foresight to realize that, if we do not prevent the gradual erosion of our Constitutionally protected rights, we will wake up one day to find ourselves living under the same type of all-powerful government that the Framers of the Constitution once lived under themselves.

Scott Weeber

176. *People v. Lidster (2002)*, 779 N.E.2d at 860.